

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

CLAY BURGON,

Plaintiff

Case No. 2:20-cv-02336-KJD-DJA

ORDER

v.

STATE OF NEVADA EX REL NEVADA
DEPARTMENT OF CORRECTIONS, et al.,

Defendants

This action began with a *pro se* civil rights complaint filed pursuant to 42 U.S.C. § 1983 by a state prisoner. On September 27, 2021, the Court issued an order dismissing the complaint with leave to amend and directed Plaintiff to file an amended complaint within 30 days. (ECF No. 6). The 30-day period has now expired, and Plaintiff has not filed an amended complaint or otherwise responded to the Court's order.

District courts have the inherent power to control their dockets and “[i]n the exercise of that power, they may impose sanctions including, where appropriate . . . dismissal” of a case. *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action, with prejudice, based on a party's failure to prosecute an action, failure to obey a court order, or failure to comply with local rules. See *Ghazali v. Moran*, 46 F.3d 52, 53-54 (9th Cir. 1995) (affirming dismissal for noncompliance with local rule); *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir. 1992) (affirming dismissal for failure to comply with an order requiring amendment of complaint); *Carey v. King*, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (affirming dismissal for failure to comply with local rule requiring *pro se* plaintiffs to keep court apprised of address); *Malone v. U.S. Postal Service*, 833 F.2d 128, 130 (9th Cir. 1987) (affirming dismissal for failure to comply with court order); *Henderson v. Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986) (affirming dismissal for lack of prosecution and failure to comply with local rules).

In determining whether to dismiss an action for lack of prosecution, failure to obey

1 a court order, or failure to comply with local rules, the court must consider several factors:
2 (1) the public's interest in expeditious resolution of litigation; (2) the court's need to
3 manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring
4 disposition of cases on their merits; and (5) the availability of less drastic alternatives.
5 *See Thompson*, 782 F.2d at 831; *Henderson*, 779 F.2d at 1423-24; *Malone*, 833 F.2d at
6 130; *Ferdik*, 963 F.2d at 1260-61; *Ghazali*, 46 F.3d at 53.

7 Here, the Court finds that the first two factors, the public's interest in expeditiously
8 resolving this litigation and the Court's interest in managing the docket, weigh in favor of
9 dismissal. The third factor, risk of prejudice to Defendants, also weighs in favor of
10 dismissal, since a presumption of injury arises from the occurrence of unreasonable delay
11 in filing a pleading ordered by the court or prosecuting an action. *See Anderson v. Air*
12 *West*, 542 F.2d 522, 524 (9th Cir. 1976). The fourth factor—public policy favoring
13 disposition of cases on their merits—is greatly outweighed by the factors in favor of
14 dismissal discussed herein. Finally, a court's warning to a party that his failure to obey
15 the court's order will result in dismissal satisfies the "consideration of alternatives"
16 requirement. *Ferdik*, 963 F.2d at 1262; *Malone*, 833 F.2d at 132-33; *Henderson*, 779
17 F.2d at 1424. The Court's order requiring Plaintiff to file an amended complaint within 30
18 days expressly stated: "It is further ordered that, if Plaintiff fails to file an amended
19 complaint curing the deficiencies outlined in this order, the Court will dismiss this action
20 without prejudice for failure to state a claim." (ECF No. 6 at 9). Thus, Plaintiff had
21 adequate warning that dismissal would result from his noncompliance with the Court's
22 order to file an amended complaint within 30 days.

23 It is therefore ordered that this action is dismissed without prejudice based on
24 Plaintiff's failure to file an amended complaint in compliance with this Court's September
25 27, 2021, order and for failure to state a claim.

26 It is further ordered that Plaintiff's application to proceed *in forma pauperis* (ECF
27 No. 4) is granted. Plaintiff shall not be required to pay an initial installment of the filing
28 fee. Even though this action is dismissed, the full filing fee must still be paid pursuant to

1 28 U.S.C. § 1915(b)(2).

2 It is further ordered that, pursuant to 28 U.S.C. § 1915, as amended by the Prison
3 Litigation Reform Act, the Nevada Department of Corrections will forward payments from
4 the account of **Clay Burgon, #87633** to the Clerk of the United States District Court,
5 District of Nevada, 20% of the preceding month's deposits (in months that the account
6 exceeds \$10.00) until the full \$350 filing fee has been paid for this action. The Clerk of
7 the Court will send a copy of this order to the Finance Division of the Clerk's Office. The
8 Clerk will send a copy of this order to the attention of **Chief of Inmate Services for the**
9 **Nevada Department of Corrections**, P.O. Box 7011, Carson City, NV 89702.

10 It is further ordered that the Clerk of Court will close this case and enter judgment
11 accordingly.

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13 DATED THIS 5th day of November 2021.

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UNITED STATES DISTRICT JUDGE